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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,616	11/24/2003	Vincent Ardizzone	03-12495	4240

25189 7590 03/07/2007  
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SANTA MONICA, CA 90401-1211

EXAMINER
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LUSTUSKY, SARA

ART UNIT	PAPER NUMBER
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3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

88

<b>Office Action Summary</b>	Application No. 10/720,616	Applicant(s) ARDIZZONE ET AL.	
	Examiner Sara Lustusky	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on February 25 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/24/03, 1/20/06</u>   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Examiner acknowledges Applicant's Preliminary Amendment dated February 25, 2005. Claims 1-37 have been cancelled. New claims 38-63 are acknowledged. Claims 38-63 are pending.

#### ***Priority***

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 120 is acknowledged. However, claim language drawn to therapeutic treatment of a user's foot and language drawn to the application of heat will not receive the benefit of the dates of the prior-filed applications, as this subject matter was not previously disclosed and is considered to be new matter.

#### ***Claim Objections***

**Claims 40, 42, 43, 49, 50-53 and 60** are objected to because of the following informalities:

Regarding claim 40, the recitation "said plurality of bi-axial revolving magnetic members" in line 2 should read - - said magnetic members - - to be consistent with antecedent claim language;

Regarding claim 42, the recitation "ate" in line 2 should read - - at - -;

Regarding claim 43, the recitation "said at least one casing" in line 2 should read - - said at least one magnetic member casing - - to be consistent with antecedent claim language;

Regarding claim 49, the recitation "has substantially spherical" in line 2 should read - - has a substantially spherical - -;

Art Unit: 3735

Regarding claims 50 and 52, the recitation "said substantially spherical magnetic members" in line 2 should read - - said magnetic members - - to be consistent with antecedent claim language;

Regarding claim 51, the recitation "has substantially ring-shaped" in line 2 should read - - has a substantially ring-shaped - -;

Regarding claim 53, the recitation "by way of" in line 2 should read - - with - -;

Regarding claim 60 the recitation "has irregular surface" in line 2 should read - - has an irregular surface - -.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 45-59** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear from the claim language if "a respective housing unit" recited in line 3 of claim 45 and "said housing units" recited in dependent claims 47, 48, 51, 52, 55 and 56 are the same structures as the "magnetic member housing unit" recited in line 2 antecedent claim 43.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 46-59** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim language of claim 46 is drawn to a positive recitation of the human body, which is non-statutory subject matter. The Examiner recommends changing the recitation "axes to provide magnetic therapy to a user's foot" in line 3 to - - axes adapted to provide magnetic therapy to a user's foot - -.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 38, 40-44 and 60** are rejected under 35 U.S.C. 102(b) as being anticipated by Anzai (US 4846159 A).

Anzai teaches a magnetic therapeutic apparatus capable of being used to provide therapy to a user's feet, the apparatus comprising: at least one area capable of being used to provide therapy to a user's foot (top half of Figure 7), a plurality of magnetic members (5) disposed substantially under said at least one foot therapy area and adapted to revolve simultaneously about two axes (as seen in Figures 12-13 and 17-22) capable of providing magnetic therapy to a user's foot placed over said at least one foot therapy area (as seen in Figure 3) (as described in the abstract and in lines 54-60 of column 7), wherein said apparatus comprises an enclosure (1)

Art Unit: 3735

for said plurality of bi-axial revolving magnetic members (5), wherein said at least one foot therapy area has an irregular surface configured to provide massage like treatment to a user's body wherein said at least one foot therapy area is formed on an exterior surface of said enclosure (as seen in Figures 12 and 14), wherein said enclosure (1) houses at least one magnetic member casing (13) (as seen in Figure 13), wherein said at least one casing (13) is adapted to rotatably accommodate a plurality of magnetic member housing units (5 encased in housing layers 3b and 3c) (as seen in Figures 2 and 2a), wherein each of said housing units (5 encased in layers 3b and 3c) is adapted to revolve about first axis of rotation (as seen in Figures 11, 13 and 16-22).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 39** is rejected under 35 U.S.C. 103(a) as being unpatentable over Anzai (US 4846159 A) as applied to claim 38 above, in view of Leason et al. (US 6866776 B2).

While Anzai teaches a magnetic therapeutic apparatus for treating the tissue of a user, said apparatus being capable of treating a user's foot, the additional use of heat is not taught.

Leason et al. teaches a magnetic therapeutic apparatus for massaging and treating the tissue of a user wherein the magnetic therapy is combined with heat therapy (as described in lines 12-28 of column 1, in lines 54-67 of column 4 and in lines 1-4 of column 5), wherein the rotating motion of the device combined with application of magnetic force can help to eliminate

Art Unit: 3735

toxins and waste products to permit the treatment area to be replenished with oxygen-rich blood and nutrients and the addition of heat can further catalyze these desired effects (as described in lines 48-64 of column 5).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the magnetic therapy of a device similar to that of Anzai with heat therapy similar to the apparatus and method of Leason et al. in order to enhance the treatment, bolster the area's resistance to degenerative effects, ease pain, increase circulation, and invigorate muscles to better speed recovery (as described in lines 48-64 of column 5).

**Claims 61 and 63** are rejected under 35 U.S.C. 103(a) as being unpatentable over Anzai (US 4846159 A) in view of Galizia (US 5996163 A).

Anzai teaches a magnetic therapeutic apparatus capable of being used to provide therapy to a user's feet, the apparatus comprising: at least one area capable of being used to provide therapy to a user's foot (top half of Figure 7), a plurality of magnetic members (5) disposed substantially under said at least one foot therapy area and adapted to revolve simultaneously about two axes (as seen in Figures 12-13 and 17-22) capable of providing magnetic therapy to a user's foot placed over said at least one foot therapy area (as seen in Figure 3) (as described in the abstract and in lines 54-60 of column 7), wherein said apparatus comprises an enclosure (1) for said plurality of bi-axial revolving magnetic members (5), wherein said at least one foot therapy area has an irregular surface configured to provide massage like treatment to a user's body. While Anzai teaches the use of a magnetic therapeutic apparatus to treat desired locations of a user's body, the top and bottom of the foot is not expressly taught as a desired treatment location.

Galizia teaches a massage apparatus and method for massaging the top and bottom of a user's foot comprising placing a massage apparatus above and below a user's foot (as seen in Figures 3-4) (as described in the abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a magnetic therapeutic apparatus similar to that of Anzai to massage and treat the top and/or bottom of a user's foot in order to relax the user, stimulate circulation in the user's foot and to relax the muscles of the user's foot.

**Claim 62** is rejected under 35 U.S.C. 103(a) as being unpatentable over Anzai (US 4846159 A) in view of Galizia (US 5996163 A) and further in view of Leason et al. (US 6866776 B2).

Anzai teaches a magnetic therapeutic apparatus capable of being used to provide therapy to a user's feet, the apparatus comprising: at least one area capable of being used to provide therapy to a user's foot (top half of Figure 7), a plurality of magnetic members (5) disposed substantially under said at least one foot therapy area and adapted to revolve simultaneously about two axes (as seen in Figures 12-13 and 17-22) capable of providing magnetic therapy to a user's foot placed over said at least one foot therapy area (as seen in Figure 3) (as described in the abstract and in lines 54-60 of column 7), wherein said apparatus comprises an enclosure (1) for said plurality of bi-axial revolving magnetic members (5), wherein said at least one foot therapy area has an irregular surface configured to provide massage like treatment to a user's body. While Anzai teaches the use of a magnetic therapeutic apparatus to treat desired locations of a user's body, the top and bottom of the foot is not expressly taught as a desired treatment location.



Galizia teaches a massage apparatus and method for massaging the top and bottom of a user's foot comprising placing a massage apparatus above and below a user's foot (as seen in Figures 3-4) (as described in the abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a magnetic therapeutic apparatus similar to that of Anzai to massage and treat the top and/or bottom of a user's foot in order to relax the user, stimulate circulation in the user's foot and to relax the muscles of the user's foot.

While the combination of Anzai and Galizia teaches a method of using a magnetic therapeutic apparatus for treating the tissue of a user's foot, the additional use of heat is not taught.

Leason et al. teaches a magnetic therapeutic apparatus for massaging and treating the tissue of a user wherein the magnetic therapy is combined with heat therapy (as described in lines 12-28 of column 1, in lines 54-67 of column 4 and in lines 1-4 of column 5), wherein the rotating motion of the device combined with application of magnetic force can help to eliminate toxins and waste products to permit the treatment area to be replenished with oxygen-rich blood and nutrients and the addition of heat can further catalyze these desired effects (as described in lines 48-64 of column 5).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the magnetic therapy of a device similar to that of the combination of Anzai and Galizia, in a method with heat therapy similar to the apparatus and method of Leason et al. in order to enhance the treatment, bolster the area's resistance to degenerative effects, ease pain, increase circulation, and invigorate muscles to better speed recovery (as described in lines 48-64 of column 5).

Art Unit: 3735

***Allowable Subject Matter***

Claims 45-59 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Regarding claims 45-59, none of the prior art of record teaches or fairly suggests a magnetic foot therapeutic apparatus comprising at least one foot therapy area and a plurality of magnetic members adapted to revolve about a second axis of rotation within a respective housing unit while said housing unit revolves about a first axis of rotation.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ahn (6602212 B1) teaches an apparatus and method for massaging the top and bottom of a user's foot. Bove (US 6065210 A) teaches the use of a massage device comprising magnets, which therapeutically causes the tissue of a user to heat. Avidor et al. (US 5868688 A) teaches a foot massage apparatus.

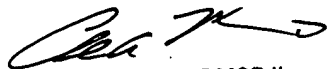
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Lustusky whose telephone number is (571) 272 8965. The examiner can normally be reached on M-F: 9 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272 4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S.L.



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12